



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 7178-01
5 September 2002

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 August 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You reenlisted in the Navy on 13 June 1997 for four years. At that time you had completed about 14 years of active duty. On 11 May 2002 you received nonjudicial punishment (NJP) for violations of Articles 92 and 134 of the Uniform Code of Military Justice. The specifications read as follows:

In that (you) on or about 20 October 2000, (were) derelict in the performance of those duties in that he willfully failed to follow the retest procedures outlines in the Maintenance Overhaul Manual during a PMS check of the barricade arresting gear engine, as it was his duty to do.

In that (you) on or about 20 October 2000, wrongfully endeavor to influence the testimony of (ABEAN C) as a witness before the Ship's Executive Officer in (your case) by instructing (ABEAN C) to testify falsely concerning his knowledge of improper maintenance during a PMS check of the barricade arresting gear engine.

The next two specifications charged you with attempting to influence the testimony of ABE3 I and ABE2 B. The punishment imposed was 15 days restriction, forfeiture of pay totaling \$300 and a reduction in rate from ABE1 (E-6) to ABE2 (E-5).

In your appeal of the NJP you contended that you were unjustly punished and the punishment was disproportionate to the offenses. You contended that the original statements taken by the command investigators were improperly destroyed which prevented you from adequately defending yourself at a court-martial. You pointed out that because of the destroyed statements, the command dropped the court-martial and imposed the NJP at issue. You further contended that the initial NJP, at which the commanding officer referred the charges to a court-martial, imposed punishment and that the subsequent proceedings was double jeopardy. You believed that you would have been able to prove your innocence at a court-martial.

The commanding officer recommended that your appeal be denied and stated in his endorsement, in part, as follows:

.... (His) case was originally referred to a summary court-martial, which he refused. The case was then referred to a special court-martial. Charges were later withdrawn and sent back to nonjudicial punishment when it was discovered that the divisional investigator had, without proper authority, destroyed the witness statement regarding the incident

.... When ABE2 (B) informed the chain of command that the maintenance check had been "gun-decked" and the chain of command began to question the witnesses, (Petitioner) contacted the witnesses, some at home, and attempted to influence their testimony regarding the exact number of times the test had been performed. These facts were corroborated by witness statements and testimony introduced at nonjudicial punishment on 11 May 2001. I found by a preponderance of the evidence that (he) had committed the offenses charged.

The commanding officer further stated that the other individuals involved received punishments that included forfeitures of pay and a suspended reduction in rate or, in the case of the junior airmen, the cases were dismissed with a warning. He believed that the punishments imposed were commensurate with the degree of culpability. The commanding officer stated that he made it clear to you that he did not impose any punishment during the 21 November 2000 hearing and no jeopardy attached. He also pointed out, in effect, that your relief from maintenance duties and

assignment to the training division was an administrative action and not an NJP punishment. Finally, he pointed out that the denial of leave was not a punitive measure but an administrative measure taken with due consideration for the operational commitments of the command and the needs of the service.

The commanding officer concluded his endorsement by stating that the improperly conducted maintenance could have had disastrous and deadly consequences for the members of your division working the flight deck, and for the aircrews who operated aircraft from that flight deck. Additionally, he believed that attempting to alter the testimony of others regarding the incident was not in keeping with the level of integrity he expected from a first class petty officer. The commanding officer believed that the NJP was appropriate given the nature of your offenses, and the punishment imposed was proportionate to the offenses and in keeping with the punishments awarded in the companion cases. On 8 August 2001, the Commander, Carrier Group Six, denied the NJP appeal.

Since the NJP you have incurred additional obligated service and will continue to serve until you qualify for transfer to the Fleet Reserve in June 2003.

In your submission to the Board you essentially raise the same issues set forth in your appeal of the NJP. You point out your many years of good service prior to the NJP and again contend, in effect, that the punishment imposed was disproportionate because you will probably transfer to the Fleet Reserve in pay grade E-5.

The Board noted that no evidence was submitted to support any of your contentions. In the absence of such evidence, the Board substantially concurred with the commanding officer's comments in the endorsement on your appeal and the action taken by the Commander, Carrier Group Six. The Board concluded that the commanding officer did not abuse his discretion when he imposed NJP and the punishment imposed was not too severe.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval

record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director